IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

MFA.No. 465 of 2002()

OPMV.2501/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PALA
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APPELLANTS/ PETITIONERS:
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1. P.R.CHANDRAN, S/O. KUNJAN,
PUTHUPPARAMBIL, 34TH MILE,
MUNDAKKAYAM EAST P.O., KOTTAYAM DIST.

2. SULOCHANA, W/o. P.R.CHANDRAN, -DO- -DO-

BY ADV. SRI.MATHEWS JACOB (SR.)
ADV. SRI.JACOB MATHEW

RESPONDENTS/RESPONDENTS:
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1. P.A.KURUVILLA, S/o. ABRAHAM,
ILAPPUMKAL HOUSE, ARREEPPARAMBU P.O.,
MANARCADU, KOTTAYAM.

2. THE MANAGING DIRECTOR, K.S.R.T.C.,
THIRUVANANTHAPURAM

BY ADV. SRI.K.PRABHAKARAN,SC KSRTC

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 11/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.465 OF 2002 (E)

Dated this the 11th day of October, 2007

J U D G M E N T

KOSHY,J.

A 16 year old girl sustained fatal injuries in a road accident while she was standing on the side of the road, a stage carriage bus owned by the 2nd respondent and driven by the 1st respondent hit her. She was crushed in between the body of the bus and parapet of a culvert and in order to extricate her body, the parapet had to be demolished. She was taken to the Government Hospital, Kanjirappally. But the doctor declared her dead. She was studying in the 8th standard at the time of her death. Tribunal after considering the evidence, found that 1st respondent driver of the bus was solely responsible for the accident as rash and negligence was found on his part. However, only Rs.50,000/- was awarded for compensation for death stating that that was the statutory liability. Claim was filed under Section 166 of the Motor Vehicles Act when it was found that driver of the stage carriage bus was negligent and respondent has to assess the

compensation under Section 166 of the Motor Vehicles Act. It is true that she was not employed and she was only a student. Apex Court held that compensation should be awarded taking the 2nd Schedule as the guideline and only in exceptional cases it can be deviated in cases filed under Section 166 also (See three member Bench decision of the Apex Court in ***Smt.Supe Dei and others v. M/s.National Insurance Company Ltd. and another (JT 2002 (Suppl.1) SC 451)*** and second decision in ***APSRTC v. Minor N. Gayathri (2007 AIR SCW 5589)***. Here no exceptional circumstances are there. In 163 A claims claimants need not prove that driver of the offending vehicle is negligent. But in 166 claims, negligence of the driver shall be proved. Therefore according to the claimants, compensation under Section 166 shall be more than compensation under Section 163 A. The father and mother were aged between 40 and 35 years at the time of accident. Apt multiplier is 16 even if the age of victim or claimants are taken up as per the 2nd Schedule. We take Rs.15,000/- as the notional income, fixed as per the 2nd Schedule for a non earning person for calculation, and if that be so, Rs.10,000/- can be taken for the yearly loss of dependency and the compensation payable for the death will be Rs.1,60,000/-. She

was crushed in between the body of the bus and parapet and on taking her to the hospital, she died. We award Rs.5,000/- for pain and sufferings and she was taken to the hospital thereafter her body was taken to the house for burial in an ambulance. Therefore, we award Rs.1,000/- for transport expenses and Rs.2,000/- for cremation expenses. It is submitted that as a result of the accident and considering the nature of injuries sustained, there was mental agony and there is loss of love and affection and loss of estate. Towards these needs, we award Rs.5,000/-. Therefore total compensation will be Rs.1,73,000/-. Total compensation awarded by the tribunal was Rs.54,000/-. Therefore balance compensation payable will be Rs.1,19,000/-. The owner and driver are jointly and severally liable to deposit the amount. The above amount should be deposited by the 2nd respondent owner of the vehicle with 7.5% interest from the date of application till its deposit after deducting any amount paid. With the above observations this appeal is partly allowed.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

prp

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.465 OF 2002 (E)

J U D G M E N T

11th October, 2007